

**FREDERICK COUNTY LIQUOR BOARD**  
***Public Meeting Minutes***  
***Monday, March 7, 2016***

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| Those Present: | Mr. Dick Zimmerman, Chairman<br>Mrs. Maggi Hays, Board Member<br>Mr. Rick Stup, Board Member<br>Mrs. Linda Thall, Sr. Asst. County Attorney<br>Mr. Harold DeLauter, Alcoholic Bev. Inspector<br>Mr. Bob Shrum, Alcoholic Bev. Inspector<br>Mrs. Ashley Sklarew, Administrative Specialist V |
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A Public Meeting was held at 12 E. Church Street, Frederick, Maryland, and was called to order at 9:00 AM by Chairman Zimmerman.

**1. Public Input**

RE: Class C Clubs License Holder  
Request for interpretation of an employee

Mr. Stup made a disclosure that he is involved with a number of organizations. Mr. Stup stated that he is a Past Commander and an Honorary Life Member of Francis Scott Key Post 11, American Legion Life Member of the Amvet Post 2, member of Elks Lodge 684, member of Eagles Arie 1136, Past Commander and Life Member of Post 78 29<sup>th</sup> Division Association and member of the Junior Fire Company. all which are licensees or receive a special license from time to time. Mr. Stup stated he does not feel that he has a conflict of interest on this public hearing. Mr. Zimmerman stated he is a retired Naval Officer and has been a member of many organizations also. Mrs. Hays stated that she is a former member of the Elks lodge. Mr. Zimmerman stated that the 3 Commissioners are appointed by the Governor of Maryland to enforce the Maryland laws and regulations whether they agree with them personally or not. There are many laws that the Commissioners are trying to modify. Mr. Zimmerman stated Commissioners have been to the Maryland State House in Annapolis recently and stood before the Economic Matters Committee and the State Delegation, and were successful last session in getting 6 to 7 laws modified. Many of the Liquor Laws of Maryland have been around since prohibition and many of the law are archaic. Mr. Zimmerman further stated the Commissioners want to be helpful and supportive to all licensees. The Board is here today in response to an issue that relates to volunteers and their roles and responsibilities to various clubs. Mr. Stup stated this issue is dealing with an interpretation of Chapter 6.3 of the Frederick County Alcoholic Beverages Regulations. Mr. Zimmerman

stated Section 6.3 states consumption or intoxication while on duty, no licensee or employee shall be permitted to consume any alcoholic beverages anywhere in the establishment including the area behind the bar while on duty. The regulations further go on to talk about band members and the regulations vary in different venues and/or jurisdictions or counties especially to the section regarding band members. No band member will be permitted to consume alcoholic beverages while performing on the stage. Band members may consume alcoholic beverages during a break at a table that is not on a stage or in the stage area, and licensee or employee shall not be permitted to be on duty at anytime for any reason while intoxicated regardless where the alcoholic beverages were consumed.

Mr. Zimmerman stated the Board received anonymous complaints from people who are members of local organizations that communicated with this Board. They complained that during an event such as a bingo night there were volunteers there who were visibly intoxicated in front of the patrons. We don't have no idea who the people were.

### **Public Comments:**

David Giles, 1922 Harpers Court, Frederick MD, Commander of Post 11, Francis Scott Key Post 11, thanked the Board for accepting his request for a public hearing so that Post 11 could receive clarification of the liquor control Board's regulations regarding Section 6.3. Mr. Giles stated that he alone is speaking on behalf of American Legion Francis Scott Key Post 11 and he is not speaking on behalf of any other organization. Mr. Giles stated he was seeking a decision from the Board that would in fact mitigate future requests for public hearings due the interpretation as well providing absolute clarity for the inspectors and Post 11. Mr. Giles stated the issue at hand is whether Section 6.3 applies to the volunteers of Post 11 and therefore all nonprofits or whether Section 6.3 was written solely to apply to pay compensating contracted employees of an organization. Mr. Giles defined the term employee as a person under contract with an organization who is receiving fiscal compensation for their efforts and work within that organization. An employee within their organization can either be a contractor brought in for a specific purpose such as make a repair or play music or simply clean or they could be a part of the core organization structure such as, dishwasher, administrative manager, or bartenders. Section 6.3 does not anywhere in its entirety reference volunteer unpaid helpers. Mr. Giles stated that most definitions would describe a definition as being somebody who freely participates renders a service or expresses a willingness to help in the absence of contractor compensation. A volunteer in Post 11 could be a raffle ticket seller, a bingo caller or the barbeque cook at the annual picnic or somebody who is conducting a meeting for a charity fundraiser. These are two very different types of individuals within a nonprofit organization and their roles and responsibilities can vary greatly as well. Mr. Giles stated that if Section 6.3 is applied to the volunteers of Post 11. Mr. Giles stated that committee participants who are gathering to try and develop a charity fundraiser could not have a drink before or during their meeting, because essentially they would be viewed as being on duty for that meeting, because they would be viewed as employees for

that time period. If Section 6.3 is applied, it means that John Giles, as commander and licensee and a frequent volunteer could never have a drink when he enters the legion because as the Commander and Licensee he would always be viewed as being on duty. There is never a time when he goes into the organization when someone is not asking him a question, asking for 5 or 10 minutes of his time to discuss an issue, or looking for advice, guidance and counsel with that said even though he may have gone to the post to enjoy personal time he would be viewed as being on duty and under the interpretation of the regulation he would be in violation of the regulation of the County. In these instances are volunteers truly on duty. If the Board determines that Section 6.3 should be applied to volunteer. Mr. Giles stated that the examples he gave means his volunteers at the Post are now in violation of the County's Regulations. Mr. Giles stated if the current interpretation is not clarified by the Board where is the line drawn to enforce the regulation. Mr. Giles stated The American legion has a proud history and tradition of conducting its social business in a very professional manner. Mr. Giles stated that if volunteers were to be considered employees this may sway them from volunteering. Mr. Giles stated that this would also place his organization in a precarious legal situation regarding enforcement and the ability of the leadership of the organization and staff to make the determination whether someone has come to the legion to have dinner or truly in a volunteer employee state of being. Mr. Giles asks the Board to exclude volunteers from Section 6.3 leave the section as it stands, and apply it only to paid staff and licensees.

Mr. Zimmerman thanked Mr. Giles for his statement. Mr. Zimmerman asked Mr. Giles if the volunteer received free beer for volunteering as compensation. Mr. Giles stated that no the volunteers do not receive free beer. Mr. Giles stated that the volunteer either pays it out of pocket or the volunteer receives a coupon paid by post's accounts to track the number of drinks being served and it is not advertised as being free beer. Mr. Zimmerman asked if any of the volunteers actually serve alcohol. Mr. Giles responded none that he has ever witnessed or is aware of. Mr. Zimmerman asked if an incident ever occurred does the organization's current liability insurance cover the volunteers as it would cover employees. Mr. Giles stated he could not answer the question at this time, because he has not reviewed the policy to accurately answer the question. Mr. Zimmerman stated his background profession as a lawyer and give his professional opinion that most business policies have a liability clause that should cover volunteers. Mr. Stup stated his interpretation this section was only meant for those staff members that deal with alcohol. Mr. Stup gave the example that if the article is applied to volunteers, that if the organization were to have event such as a picnic for the 4<sup>th</sup> of July the volunteer would not be able to work and enjoy the event and this could essentially cause the organization to possibly outsource the event to a catering company. Mr. Stup sees this article curtailing volunteers from volunteering for events. Mr. Zimmerman stated the intent of Section 6.3 for employees is that if they are involved serving or sell of alcoholic beverages and even as a good reputation or business decision you don't

want to have someone who is visibly intoxicated dealing with money and the sale of drinks, because they may be too impaired to make sound decisions such as giving someone who may have had too much to drink another drink or even giving the correct change back to patrons. Mr. Zimmerman stated it is also not good for the reputation of the organization. Mr. Zimmerman asked Mr. Giles does the Post have a policy in place written or otherwise that volunteers will not serve or be involved in the service or sale of alcoholic beverages. Mr. Giles responded that the organization does not have a policy in writing that he is aware of, but the older members of the organizations have been very conscious to emphasis that members of the organization understand the organization does not give out free alcohol for volunteer services, and if a volunteer is under the influence of alcohol you will not be placed in a position to serve alcohol. Mr. Giles stated that the organization has paid staff to cover serving alcohol to members. Mr. Giles stated they can put a written policy in place if it would better serve the issue. Mr. Stup stated all the groups should have codes of conduct that are meant for their members. If there happens to be a bartender who volunteers at no fee it all goes through the bar manager or the event manager and they would be considered a part of the bar staff and would be employees. Mr. Zimmerman stated that the Liquor Board administrator was absent but made a statement that there was an unwritten policy of past Boards that all volunteers no matter what they are doing could not drink during the time that they were in a so called volunteer status, duty, or shift. Mr. Zimmerman stated this is the first time this question has come up for this Board.

Mr. Zimmerman asked members of others organizations that were represented to come forward if they wanted to give a public comment.

Dwight Reynolds, Commander of the Woodsboro American Legion Post 282 and Commander of the Frederick County Council of the American Legion. Mr. Reynolds stated that he visits all the post in the Frederick County Region and the posts are very diligent in keeping up with the liquor laws. Mr. Reynolds stated several years ago at Post 282 they had an employee show up that had been drinking and he was terminated on the spot. Mr. Reynolds stated that all of the funds that these organizations use are raised by volunteers. Mr. Reynolds stated that the volunteers are critical to the organizations and it's a bonus if they can have an alcoholic beverage while on duty volunteering at a fundraiser. Mr. Reynolds stated it's hard to see the rewards of your efforts when you're a volunteer so a little incentive is nice. Mr. Reynolds stated that the Post staff monitors their volunteers very well. Mr. Reynolds affirmed that Post 282 has liability insurance. Mr. Reynolds also stated that he is certain most of the posts are insured. As County Commander, he has to view the insurance policies. Mr. Zimmerman asked since Mr. Reynolds has oversight over the County do volunteers receive free alcohol for volunteering. Mr. Reynolds stated they operate with the same principles as Post 11. The volunteers receive a coupon for 1 drink. Mr. Zimmerman asked if volunteers serve or sell alcohol. Mr. Reynolds responded do they do not. Ms. Hays stated she doesn't see any conflict for when licensees have someone trained to recognize when a person is intoxicated. You do not allow an intoxicated person paid or not to serve alcohol. Mrs. Hays stated

that Mr. Reynolds' organization was outside of the one particular incident that occurred and his organization is doing a good job.

Mr. Zimmerman asked Inspector DeLauter what he has observed during the times that he has inspected these organizations. Inspector DeLauter stated that he has never seen an employee or a volunteer that had too much to drink or was intoxicated.

Mac McGuire, Financial Officer at Post 168 in Thurmont, stated he is also the former Past Post Commander and Past County Commander. He is TAM trained as a volunteer who can serve beer. Mr. McGuire stated he keeps track of every drink disbursed so that the organization can pay sales tax on each drink. The post monitors all the beers that get sent out to functions, and what is returned.

Rebecca Bilka, Event and Festival Coordinator for the Maryland Winery Association and the Brews Association of Maryland, stated she has a different set of experiences to speak on today. The members of her respected organization asked Ms. Bilka to come and speak to the Committee. Ms. Bilka is either coordinating or heavily involved in over 15 events across the state. She has worked in 13 different counties with all the county's different Liquor Boards. She stated it is pretty standard for members of this industry to be able to sample their product at these events and serve alcohol and continue to serve after they have sampled alcoholic beverages. This sampling is very different than consumption. These samples are in very small portions and this is meant for two reasons, one to taste the product and the other is to develop a flavor profile. This is never for the intention of recreational drinking. The servers at these events are tips, or tams, best certified and they know what is respectable and legitimate consumption. Ms. Bilka is currently involved in the Frederick Wine festival that will take place this fall and she is in charge of the Maryland craft beer festival in Frederick City. Ms Bilka affirmed from her personal experience she has never seen the staff or employees ever abuse the sampling privilege. Mr. Zimmerman questioned Ms. Bilka's statement that all of the servers are Tips trained. Ms. Bilka stated that the industry likes for all servers to be trained. If the server is not, they are monitored by someone who is. Mr. Zimmerman also asked if volunteers are allowed to sample wines and serve. Ms. Bilka stated it is not uncommon for a volunteer to sample the product that they are serving so they know what it tastes like to be able to represent it accurately to the patron. Ms. Bilka stated that the volunteer signed an agreement stating that they will gain admission to the festival after the volunteer has finished his/or her job. The understanding of the agreement is that alcohol consumption happens once the volunteer has finished the volunteer assignment not during their shift. Mr. Stup asked if it is possible to identify the people that would sample the wines and beers. Ms. Balka stated she has seen breweries and wineries turn away volunteers that seem inadequate to pour samples. Mr. Stup suggested it would be helpful information for the inspectors if they knew who was severing wines and beers before the events. Ms. Balka stated that she could create a list of the employees, owners and volunteers that would be present for the events, but she cannot guarantee who is going to show up and want to try samples. Mr. Zimmerman stated that there is always a director that gives a briefing on what's

expected from volunteers before the event starts. Mr. Zimmerman stated that the Tams person on duty looks and observes and ensures if someone shows up drunk they would be pulled from there station immediately. Mr. Zimmerman states there are several people monitoring the event for that purpose.

Shane Power, from Post 96 of Brunswick MD, stated that sometimes a volunteer is a person that bought a ticket to an organizational event. He has managed the bar now for 5 years and he is tams certified. He stated that a volunteer may be attending an event and someone spills a drink and the volunteer may run and get a mop to clean up the spill. He just wanted to give the Board an example of how things may happen

Ray Bussard, is a past commander of Amvet Post 9, stated that it's hard to get volunteers to volunteer. When he volunteers at an event he never has time to drink and most volunteers don't drink because they are working until an event ends and the organization may ask people attending the event to volunteer to put chairs away. So, if the organization has 30 people to get up and put chairs away does this mean the organization is in violation of the regulations? Mr. Zimmerman stated this is a business decision for the licensee, but the volunteer was not selling or serving alcohol and that is the difference in the example given.

Mr. Zimmerman stated that the Board will be putting out a response to this hearing.

**MOTION:** Mr. Stup made a motion to interpret Section 6.3 consumption or intoxication while on duty, the first paragraph is employee related to sales and serving of alcohol only.

**SECOND:** Mrs. Hays seconded the motion

**FURTHER DISCUSSION ON THE MOTION:**

Inspector Shrum stated in the case of the Bingo occurrence the bartender does not see the people in bingo because the people playing bingo are in a different room so, who is monitoring to see if anyone gives a drink to a minor. The volunteers are necessary. Mr. Zimmerman said the licensee, bartenders and the members are responsible for the behavior of the members in their organization. Mr. Zimmerman stated if it can't be the bartender than it should be the House Committee checking to ensure everyone is of age to drink. It's the Committee Chair responsibility to supervise what's going on in the bingo hall. Mr. Stup stated part of Code of Conduct for these organizations is very similar and it's the obligation of all the members to police their home organization. Mr. Zimmerman stated this policy will be for Class C Club License only.

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| <b>VOTE:</b> | Mr. Stup-Aye      |
|              | Mr. Zimmerman-Aye |
|              | Mrs. Hays –Aye    |
|              | Aye-3, Nays-0     |

The vote was unanimous

**(Motion Passed)**

## **2. Extension of DBR**

RE: Extension of DBR Reduced Consumption Fee

Mr. Stup stated as he indicated by email he wanted to have reduction of the consumption fee put on the agenda 2 years ago after taking public input and not having had any taker on the DBR license. Mr. Stup made a motion to temporarily reduce the fee for the consumption permit and the intent of the motion was to gather information on how much it would cost on an annual basis to enforce that part of the license. Mr. Stup stated the Board will look at a two tier license fee. The intent of the motion was for 2014 and 2015 and now we are into 2016 renewals.

**MOTION:** Mr. Stup made a motion to extend the reduced fee for the DBR consumption fee to include the 2016 renewal period and early after the renewals are finished the Board will look at the data and go to public hearing after notification of the DBR licensee to get input on a permanent reduction for the fee or 2 tier license fee until July 11, 2016.

**SECOND:** Mrs. Hays seconded the motion

### **FURTHER DISCUSSION ON THE MOTION:**

There was no further discussion on the motion

**VOTE:** Mr. Stup-Aye  
Mr. Zimmerman-Aye  
Mrs. Hays –Aye

The vote was unanimous Aye-3, Nays-0

**(Motion Passed)**

Inspector Shrum wanted to make a couple comments stating that he did not make any determination; he was sent to the Post 11 to tell the organization what the policy of the Board was. Inspector Shrum wanted clarification where Commissioner Hays stated she didn't see a problem with people drinking between shifts as long as they are not intoxicated. Inspector Shrum stated that is not what the law says. He stated the law states that an employee may not consume anywhere in the establishment or behind the bar while working. Mr. Zimmerman stated that Inspector Shrum was quoted in the letter from Commander Giles as stating something he was espousing the policy of this Board from the standpoint from Mrs. Dean. Mr. Zimmerman stated this is the first time that the Board has discussed this situation. Inspector Shrum stated that he had no direct conversation with Commander Giles. Inspector Shrum addressed the volunteers the beer festivals just serve. It is his understanding

that the Comptroller rules prohibit the beer distributor from actually serving or collecting any money so they would be the one that would sample. Inspector Shrum stated in the case of the Bingo occurrence the bartender does not see the people in bingo because the people playing bingo are in a different room so, who is monitoring to see if anyone gives a drink to a minor. The volunteers are necessary. Mr. Zimmerman said the licensee, bartenders and the members are responsible for the behavior of the members in their organization. Mr. Zimmerman stated if it can't be the bartender than it should be the house committee checking to ensure everyone is of age to drink. It's the Vet director to supervise what's going on in the bingo hall. Mr. Stup stated part of the code of conduct for these organizations is very similar, and it's the obligation of all the members to police their home organization. Mr. Zimmerman stated this policy will be for Class C Club License only.

### **3. Board Meeting Minutes**

RE: Approving Board minutes

Mr. Stup stated that he had given Ashley some corrections for minutes for September 14, 2015 and October 5, 2015. Mr. Zimmerman stated that he had 1 correction for the meeting held on September 14, 2016.

**MOTION:** Mr. Stup made a motion to approve the minutes.

**SECOND:** Mrs. Hays seconded the motion

#### **FURTHER DISCUSSION ON THE MOTION:**

There was no further discussion on the motion

**VOTE:** Mr. Stup-Aye  
Mr. Zimmerman-Aye  
Mrs. Hays -Aye

The vote was unanimous Aye-3, Nays-0

**(Motion Passed)**

**Meeting Adjourned**

Respectfully submitted,

Kathy Dean, Administrator  
FREDERICK COUNTY LIQUOR BOARD



